

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JESUS LOZANO**

Claimant

VS.

**EXCEL CORPORATION**

Respondent,  
Self-Insured

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Docket No. 250,349

**ORDER**

Claimant appealed the July 12, 2002 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on January 22, 2003.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Decision.

**ISSUES**

This is a claim for a February 17, 1999 accident. In the July 12, 2002 Decision, Judge Fuller determined claimant suffered no permanent impairment of function as a result of the accidental injury and awarded claimant .29 weeks of temporary total disability benefits. The Judge stated, in part:

K.S.A. 44-510(a)(22) *[sic]* specifically sets forth the benefits the Claimant is entitled to for his hernia/injury. He is entitled to: temporary total disability, if applicable; medical benefits; and potentially a healing period. This Claimant received temporary total disability and medical benefits. Further, the undisputed medical evidence presented is clear that the Claimant suffers from sensory problems only. Dr. Murati testified that there was no loss of motor function. Based on the evidence presented, the Claimant suffers no permanent impairment of function as a result of his accidental injury.

Claimant contends Judge Fuller erred by failing to award a 10 percent permanent partial general disability. Claimant contends he sustained permanent injury to nerves within the abdomen as a result of the two surgeries that he underwent following the February 1999 accident. Accordingly, claimant requests the Board to modify the July 12, 2002 Decision and enter an award for permanent partial general disability benefits based upon his 10 percent whole body functional impairment.

Conversely, respondent contends claimant sustained an operable hernia and, therefore, the Workers Compensation Act excludes an award for permanent partial disability benefits. Consequently, respondent requests the Board to affirm the July 12, 2002 Decision.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

#### **FINDINGS OF FACT**

After reviewing the entire record, the Board finds:

On February 17, 1999, claimant sustained a hernia while working for respondent. On that date, claimant was pulling on a piece of meat when he suddenly felt a pull in his groin. The parties stipulated claimant's accidental injury arose out of and in the course of employment with respondent.

Claimant immediately reported the incident to respondent and was referred for medical treatment. On February 19, 1999, claimant underwent surgery to repair an inguinal hernia. Following that surgery claimant's pain persisted and claimant was referred back to the surgeon for additional evaluation. Claimant underwent a second surgery after the surgeon diagnosed left epididymo-orchitis, left orchialgia left lower extremity pain and acute prostatitis. In December 2000, claimant underwent nerve conduction tests.

As a result of the February 1999 injury and the resulting surgeries, claimant now experiences constant pain in his groin and pain that extends down to his left foot. When claimant lifts heavy items, the pain becomes more intense. According to claimant, the pain that he now experiences restricts his ability to walk and prevents him from running. Moreover, claimant is unable to sit or ride in a car for prolonged periods without experiencing increased symptoms. Claimant's testimony regarding his ongoing symptoms is uncontradicted.

Only one physician, Dr. Pedro A. Murati, provided an opinion regarding the nature and extent of claimant's injuries. Dr. Murati, who was hired by claimant's attorney, evaluated claimant in August 2001. In reviewing claimant's medical records, Dr. Murati

noted the December 2000 nerve conduction tests indicated claimant had a left femoral nerve injury above the ilioinguinal ligament. Based upon claimant's medical records and the clinical examination, which revealed sensation deficits along the ilioinguinal and genitofemoral nerves, Dr. Murati diagnosed status post inguinal hernia repair with the exploration and neurolysis of the ilioinguinal and genitofemoral nerves.

In short, in addition to the hernia Dr. Murati determined claimant had sustained injury to two abdominal nerves. That evidence is uncontradicted.

According to Dr. Murati, depending upon which of the tables in the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.) (*AMA Guides*) were used to evaluate claimant's functional impairment, claimant has either a 10 percent or a six percent whole person functional impairment due to the February 1999 accident. The doctor testified and identified how he analyzed and arrived at both ratings. The doctor's testimony regarding claimant's whole person functional impairment is uncontradicted.

It is well established in Kansas law that uncontradicted evidence that is reasonable and credible cannot be disregarded unless it is shown to be untrustworthy.<sup>1</sup>

On its face, Dr. Murati's testimony appears reasonable and credible. It is consistent with claimant's testimony concerning his symptoms and prior complaints. Accordingly, the uncontradicted medical evidence in this claim establishes that claimant's injury was more than a mere hernia as claimant also sustained damage to abdominal nerves with pain and disability extending into the groin and his leg as a direct result of the February 1999 work-related accident and subsequent surgeries.

The record is also uncontradicted that claimant has sustained either a 10 percent or six percent whole person functional impairment under the *AMA Guides* (4th ed.). As Dr. Murati's functional impairment opinions appear reasonable on their face and there is no evidence that the doctor misinterpreted the *Guides* (4th ed.), the Board finds that claimant has sustained a 10 percent whole person functional impairment due to the February 17, 1999 accident.

### **CONCLUSIONS OF LAW**

The Board concludes claimant is entitled to receive permanent partial general disability benefits as defined by K.S.A. 1998 Supp. 44-510e.

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<sup>1</sup> See *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

When a primary injury under the Workers Compensation Act is shown to have arisen out of the claimant's employment, "every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury."<sup>2</sup>

When a worker's accident results in injury to a part of his body which is included in the schedule under K.S.A. 44-510d, such injury does not preclude compensation for general bodily disability if an unscheduled part of the worker's body is also injured. When the injury is both to a scheduled member and to an unscheduled portion of the body, compensation should be awarded under K.S.A. 44-510e.<sup>3</sup>

Because claimant has sustained injury to abdominal nerves, which is an injury that is not listed in K.S.A. 1998 Supp. 44-510d, the injury entails more than a mere hernia. Consequently, the scheduled injury statute, K.S.A. 1998 Supp. 44-510d, does not apply. Conversely, the Board concludes claimant's permanent partial general disability is governed by K.S.A. 1998 Supp. 44-510e, which provides, in part:

**Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto.** The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. **Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.** An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. (Emphasis added.)

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<sup>2</sup> *Bergemann v. North Central Foundry, Inc.*, 215 Kan. 685, 688, 527 P.2d 1044 (1974) (quoting *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 [1972]).

<sup>3</sup> *Bryant v. Excel Corp.*, 239 Kan. 688, 689, 722 P.2d 579 (1986).

Claimant requests an award of permanent disability benefits based upon his whole person functional impairment rating. Consequently, the Board concludes claimant is entitled to an award for a 10 percent permanent partial general disability.

**AWARD**

**WHEREFORE**, the Board modifies the July 12, 2002 Decision and grants claimant a 10 percent permanent partial general disability.

Jesus Lozano is granted compensation from Excel Corporation for a February 17, 1999 accident and resulting disability. Based upon an average weekly wage of \$457.92, Mr. Lozano is entitled to receive .29 weeks of temporary total disability benefits at \$305.30 per week, or \$88.54, plus 41.50 weeks of permanent partial disability benefits at \$305.30 per week, or \$12,669.95, for a 10 percent permanent partial general disability, making a total award of \$12,758.49, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the July 12, 2002 Decision that are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
D. Shane Bangerter, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Director, Division of Workers Compensation